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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

SRIVASTAVA, VIVEK

ART UNIT PAPER NUMBER

2623

DATE MAILED: 05/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/780,177

Applicant(s)

HOOBERMAN, JAMES D.

Examiner

Vivek Srivastava

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant argues, the device used in Treyz is a clock radio which is for waking and not inducing sleep.

The Examiner respectfully points out that Treyz discloses "If desired, however, the features of the invention may also be applied to audio devices other than clock radios such as stereos, portable digital audio players, automobile personal computers, web appliances, personal computers with audio cards and speakers, etc." (see col 8 lines 35 – 40). As a result, Applicants arguments are not persuasive.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the components of the system. The claim recites a network based program and web link but fails to recite elements of the virtual sound system which generate the program and web link.

Claims 4 – 6 are rejected for dependent on a rejected base claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Treyz (US 6,678,215) in view of Schulz (US 3,576,185) and in view of information disclosed in the specification of the current application.

Regarding claim 1, Treyz discloses a network-based program that produces sounds for the user (column 2, lines 36-53). Treyz does not disclose, however, the inclusion of sleep-inducing sounds as media available to the user.

In analogous art, Schulz teaches the use of low frequency sounds to help induce sleep in the user (column 4, lines 24-27).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to generate sleep-inducing tones as taught by Schulz and present them to the user via the network-based program of Treyz. The motivation for doing so would have been to allow the user to conveniently use the same audio player used for other media playback to assist them in falling asleep. Also, allowing the sleep-inducing sound creation device to be connected to the internet would allow the user to access the program on the computer when away from home without traveling with a separate sleep-inducing appliance. Therefore, it would have been obvious to combine the network-based audio system of Treyz with the sleep-inducing sound system of Schulz to produce a convenient, portable solution to insomnia.

The combination of Treyz and Schulz teach a network-based program that produces sleep-inducing tones (as stated above) but do not teach those tones to be between 3 and 30 Hz. Instead, Schulz teaches tones from 40-80 Hz.

The disclosure states: "Oscillatory sounds in the frequency range given and preferably between 5 and 15 Hz are well known to induce relaxation and somnolence." See page 3 of specification. At the time of the invention, it would have been obvious to one of ordinary skill in the art to use tones of 3-30 Hz produced through the network-based program of Treyz and Schulz to induce sleep in the user. The combination of Treyz and Schulz teaches the use of 40-80 Hz signals to induce sleep, but since signals

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of 5-15 Hz are "well known to induce relaxation", it would have been obvious to alter the combination of Treyz and Schulz to produce the tower frequency tones in the range of 3-30 Hz with a goal of maximizing relaxation of the user.

Treyz further discloses that the program is linked to a web site (column 5, lines 23-35) but fails to disclose the web link is selected from the group consisting of sleep-related research, sleep products and a sleep discussion chat room.

Official Notice is taken it would have been well known to use the web links on the internet to link to sites associate with sleep-related research, sleep products or a sleep disussion chat room for the benefit of retrieving more information regarding sleep related issues. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Treyz, Schulz and the Applicant's disclosure for the benefit of providing a user with information regarding sleep related issues.

Regarding claim 4, the combination of Treyz, Schutz and Applicant's disclosure teach all limitations of the claim as discussed for claim 1 above, wherein Treyz discloses a sound controller, specifically play duration (column 5, tine 60 to column 6, tine 1).

Regarding claim 6, the combination of Treyz, Schulz and Applicant's disclosure teach all limitations of the claim as discussed for claim 1 above, wherein Treyz discloses an alarm clock routing (column 2, tines 54-64).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Treyz in view of Schulz and view of information disclosed in the specification of the current application, as applied to claim 1 above and in further view of Adatia (US 2003/0112262).

Regarding claim 5, The combination of Treyz, Schulz and Applicant's specification teaches a network-based program which provides sleep inducing sounds to the user (see claim 1 rejection above). This combination does not teach, however, the ability of the program to provide a visual stream to the user that changes in concert with the produced sound.

In analogous art, Adatia teaches a net-based audio producing program (downloads file, audio, and visual information from the internet, paragraph 78) which comprises a visual stream that changes in concert with the sound. Paragraph 34 of Adatia teaches a "moving graphic that is preferably related to the music being played." At the time of the invention, it would have been obvious to one of ordinary skilled in the art to include sleep-inducing tones in the collection of media played through the system of Adatia. The motivation for doing this would have been to allow the user to schedule and listen to tow frequency tones help him or her fall asleep, all conveniently in the same interface which could also be used to awaken them in the morning and to play media throughout the day. In addition to the tones, it would be beneficial to the user to have calming visual effects to aid their relaxation. Therefore, it would have been obvious to include steep-inducing tones in the media available to the user through the management system of Adatia, and to present those tones to the user in a combined audio-visual display.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivek Srivastava whose telephone number is (571) 272-7304. The examiner can normally be reached on Monday – Friday from 9 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272 – 7331. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vs
5/15/06



VIVEK SRIVASTAVA
PRIMARY EXAMINER